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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JERRY JOSEPH MOODY, Defendant and Appellant.	E070824 (Super.Ct.No. BAF1701272) OPINION

APPEAL from the Superior Court of Riverside County. Jeffrey Prevost, Judge. Affirmed.

Michael Sampson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Jerry Joseph Moody guilty of one count of being a felon in possession of a firearm. (Pen. Code, § 29800, subd. (a)(1).)[1] A trial court suspended imposition of sentence and placed him on formal probation for a period of three years.

On appeal, defendant contends that the trial court erred in denying his motion in limine to suppress statements he made to police officers. We disagree and affirm.

FACTUAL BACKGROUND

On November 20, 2017, at around 5:00 p.m., Officers W. and L. arrived at defendant's residence to serve a temporary restraining order (TRO) on him. R.G., who lived with defendant, had obtained the TRO. The TRO included a "kick-out order," which allowed the officers to kick defendant out of his home. When the officers arrived at the residence, R.G. met them there and let them into her home. Once inside, R.G. indicated that defendant was in his bedroom, so Officer W. knocked on the door, called out for defendant, and pushed the door open so he could have a visual on defendant. He felt he needed a visual for officer safety reasons, since the TRO listed defendant as armed and dangerous. Furthermore, he knew defendant would not be happy with him since he was coming to kick him out of his home. Officer W. announced himself as a police officer and asked defendant to step out of the room with him.

The officer then had defendant sit down at the dining room table, gave him a copy of the TRO, and began to explain it. The officer sat at the table with him, while he

[1] All further statutory references will be to the Penal Code, unless otherwise noted.

explained everything. He said defendant had about 15 to 20 minutes to grab his belongings and leave the home. Officer W. asked if there were any weapons in his room and if it was okay for his partner to look in the room. Defendant consented. He also asked defendant what his partner was going to find in his room, and defendant denied he would find a weapon. The officer continued to explain the terms of the TRO with defendant.

Meanwhile, Officer L. searched defendant's bedroom and found a shotgun. He came back to the table, said he did not like being lied to, and said there was a shotgun under defendant's bed. Defendant said he did not know it was there, and that R.G. must have put it there. R.G. then told the officers it was defendant's gun. Officer W. asked defendant if he had ever been arrested for anything, and defendant told him he had. The officer asked him where the gun came from. Defendant said it was his shotgun, but it was under R.G.'s bed because they were at one point a couple. R.G. explained that when defendant was away, she put all his belongings in his room, and she put his shotgun that was underneath her bed under his bed. Defendant said the gun was about 10 years old. The officers ran the serial number on the gun and discovered it was not registered to anyone. Defendant confirmed that he purchased the gun and received it the same day, and the officer replied, "So it [was] before the system got updated."

Officer W. then explained that the TRO said defendant was not allowed to possess firearms, so he would need to take the shotgun. Defendant asked how he could get it back. Officer L. said they were not taking it as evidence, but for safekeeping, so he could go to the police station to retrieve it. The officers then said they would give him one of

their business cards. Officer W. told him to stand by, though, since they were checking to see if he had any convictions, and a conviction would "change what we're doing." Officer W. then received information from the dispatcher that defendant had a felony conviction. He asked defendant when it occurred, and defendant said it had been three to five years. Defendant admitted he was on parole, and the officer asked how long he had had the gun. Defendant said about 10 years, and the officer asked if he had advised his parole officer he had a firearm. Defendant said he had it in storage at that time. The officer asked if there were any other guns he should know about, and defendant said no. Defendant added that the shotgun had a lock on it and was not loaded. Officer W. ended the conversation, saying, "All right, [defendant] you want to stand up for me?" Defendant said, "Yeah." Officer W. then instructed him to put his hands behind his back and explained that he was being placed under arrest for being a felon in possession of a firearm.

Officer W. testified at trial that he was wearing a camera when he went to serve the TRO on defendant, and he recorded their interaction. A copy of the video was played for the jury, and a transcript of their conversation was submitted into evidence.

ANALYSIS

The Trial Court Properly Admitted Defendant's Statements to the Police Officers

Defendant argues that the evidence of his statements to Officer W. concerning his criminal history and possession of the shotgun were improperly admitted in violation of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). We conclude that

Miranda advisements were not required; therefore, the court properly admitted the statements.

A. *Standard of Review*

" 'In applying *Miranda* . . . one normally begins by asking whether custodial interrogation has taken place. "The phrase 'custodial interrogation' is crucial. The adjective [custodial] encompasses any situation in which 'a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' " ' [Citation.] 'Absent "custodial interrogation," *Miranda* simply does not come into play.' [Citation.]" (*People v. Ochoa* (1998) 19 Cal.4th 353, 401.) The question of whether a defendant was in custody for the purposes of *Miranda* is a mixed question of law and fact. (*Ibid.*) The first inquiry is factual—the trial court simply needs to ascertain the factual circumstances surrounding the interrogation. (*Id* at p. 402.) Once the relevant facts are ascertained, the trial court must determine whether, under the relevant legal principles, defendant was in custody for the purposes of *Miranda*. (*Ibid.*) On appeal, we review the trial court's factual findings under the substantial evidence standard of review. (*Ibid.*) However, we review the trial court's legal determination of the custody issue independently. (*Ibid.*)

B. *Procedural Background*

Defendant filed a motion in limine regarding the admissibility of his statements to the officers. The court held a hearing on the motion, and Officer W. testified as to his contact with defendant. He testified that he met with R.G. at the police station before he served the TRO, and she told him defendant had a shotgun under his bed. He testified

that when he first knocked on defendant's bedroom door and opened it, he was holding his gun to his side, about halfway out of his holster, in case defendant had his shotgun. When he looked in the room, defendant was sitting on his bed. Defendant complied with the officer's request to step outside the room. Officer W. let go of his gun when he could see defendant's hands and see that he was complying with the request to come out of the room.

Officer W. further testified that he performed a patdown search because he wanted to make sure defendant did not have any weapons on him, in case he became angry when he told him he was going to have to leave his home. The officer had defendant sit down at the dining room table, gave him a copy of the TRO, and began to explain that R.G. had requested the order, which a court granted. The officer sat next to him at the table, while he explained everything. He told defendant he had about 15 to 20 minutes to grab his belongings and leave the home. Since the officer was telling defendant he was being removed from his home, he did not want to send him into his bedroom to gather his belongings and have him return with a shotgun. So, Officer W. asked if there were any weapons in his room and if it was okay for his partner to search the room. Defendant consented.

The prosecutor argued that the officers were working under a valid court order, and that R.G. gave them permission to enter her home to serve the TRO. The officers were under the impression that defendant had a shotgun in his room, so they were thinking in terms of officer safety. They knew they were kicking defendant out of his home with no notice and did not know how he would react. The prosecutor pointed out

that the officers did not "go busting in the door with weapons drawn." Rather, the officer knocked on the door, pushed it open, and, although he had his hand on his gun, he took if off when he saw the situation was safe. He never pointed his gun at anyone or used it in an intimidating way. The prosecutor asserted that Officer W. performed a patdown search, since he had information that defendant had a shotgun in the room and could have had a weapon on his person. He argued that any rational person would want to make sure defendant had no other weapons before he had to kick him out of his house. Furthermore, the officers had defendant's consent when they searched his room and found the shotgun. The prosecutor noted that there were only two officers there, and no weapons were used or even drawn. Moreover, the contact was strictly a conversation between the officers and defendant.

Defense counsel questioned whether the consent was freely and voluntarily given. He argued that the situation turned into an unlawful detention when the officer did the patdown search, since the officer had no reasonable suspicion that defendant might be armed or dangerous. Defense counsel asserted that there were two armed officers there, and defendant was ordered to have a seat. He argued there was a ruse, since the officers knew there was a weapon in the bedroom, but asked defendant if there was and tried to obtain his consent. Defense counsel contended they used their authority to obtain his consent. Thus, the consent was not freely given, but was a submission to authority.

The court concluded that the balance of the circumstances favored the admission of the un-*Mirandized* statements. The court went through several factors, which were indicia of custody for *Miranda* purposes. It first noted there was no evidence of formal

arrest. However, the length of the detention—about 20 minutes, could indicate to a reasonable person that he was not free to leave. The court further noted that the interrogation site was within the home, which weighed in favor of the admission of the statements. The ratio of officers to suspect was less than the officers in a case cited by defense counsel, and the demeanor of the officers was much less aggressive. As to the nature of the questioning, the court stated that the questions were not focused on defendant as a suspect until the officers received confirmation that he had a prior felony conviction.

The court concluded that a reasonable person confronted with these circumstances would not believe he was being detained or subject to custodial interrogation, but rather would only anticipate that he was going to be kicked out of his home. Therefore, the court denied the motion to exclude defendant's statements to the officers.

C. *Defendant Was Not in Custody for Purposes of Miranda*

Defendant contends he was in custody when the officers questioned him about the shotgun and his criminal history. We disagree.

"Custodial interrogation has two components. First, it requires that the person being questioned be in custody. Custody, for these purposes, means that the person has been taken into custody or otherwise deprived of his freedom in any significant way. [Citation.] Furthermore, in determining if a person is in custody for *Miranda* purposes the trial court must apply an objective legal standard and decide if a reasonable person in the suspect's position would believe his freedom of movement was restrained to a degree normally associated with formal arrest. [Citation.]" (*People v. Mosley* (1999) 73

Cal.App.4th 1081, 1088 (*Mosley*).) "The totality of the circumstances surrounding an incident must be considered as a whole. [Citation.]" (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403 (*Pilster*).) Objective indicia of custody for *Miranda* purposes include: "(1) whether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning." (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1753.) "Additional factors are whether the suspect agreed to the interview and was informed he or she could terminate the questioning, whether police informed the person he or she was considered a witness or suspect, whether there were restrictions on the suspect's freedom of movement during the interview, and whether police officers dominated and controlled the interrogation or were 'aggressive, confrontational, and/or accusatory,' whether they pressured the suspect, and whether the suspect was arrested at the conclusion of the interview." (*Pilster*, at pp. 1403-1404.)

"The second component of custodial interrogation is obviously interrogation. For *Miranda* purposes, interrogation is defined as any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response. [Citation.]" (*Mosley, supra,* 73 Cal.App.4th at p. 1089.)

Here, defendant has failed to demonstrate that he was subjected to restraints comparable to those associated with a formal arrest. When the officers questioned him, he had not been formally arrested. He was questioned in his home, not a police station. Officer W. sat next to defendant at his dining room table and talked to him for about 20 minutes. There were only two officers asking questions, and the questions were

nonaccusatory. The officers were not aggressive or confrontational. The record shows that they did not pressure defendant, and he readily talked to them. Furthermore, there were no restrictions on defendant's freedom of movement. In fact, the officers were there to inform him he needed to gather his belongings and leave the home pursuant to the TRO. In other words, they were not trying to keep him there, but rather, telling him to leave.

Defendant argues that the facts of his case are "strikingly similar" to those in *People v. Benally* (1989) 208 Cal.App.3d 900 (*Benally*). However, *Benally* is distinguishable. In that case, two police officers unlocked the defendant's hotel room door with a passkey, announced they were police officers, and entered the room. At least one officer entered with his gun drawn. They found the defendant lying in his bed. The officer ordered him to raise his hands and get out of bed. Once the officer checked the bed for weapons, he holstered his gun and began questioning the defendant about a reported rape they were investigating. (*Id*. at p. 911.) The defendant contended he was subjected to a custodial interrogation in his hotel room, and therefore his statements to the officers were inadmissible because the officers failed to give *Miranda* warnings. (*Ibid*.) The court concluded that "a reasonable person, subjected to an interrogation under these circumstances, would believe that he had been deprived of his freedom in a significant way." (*Ibid*.)

Defendant points out the "one difference" between *Benally* and his case is that, unlike the officers in *Benally*, the officers here "forcefully restrain[ed]" his hands behind

his back and subjected him to a patdown search. He therefore concludes that, if the defendant in *Benally* was in custody, so was he.

Benally is distinguishable in that the officer there entered the hotel room with his gun drawn, ordered the defendant to put his hands up, and ordered him to get out of bed. (*Benally*, *supra*, 208 Cal.App.3d at p. 911.) Moreover, the officers went to the hotel room to question the defendant as a suspect in a reported rape. (*Id*. at p. 904.) In contrast, the officers here went to defendant's home to serve a TRO on him—not to interview him as a suspect. They did not have their guns drawn, and it was reasonable, given that the TRO stated he was armed and dangerous, for Officer W. to perform a patdown search. Officer W. was asked on cross-examination about the patdown search. Defense counsel asked if he ordered defendant to put his hands behind his back. The officer said he did, and explained that he took hold of defendant's hands, only so he could control them during the patdown search. Officer W. then asked him to come out of his room so he could explain the terms of the TRO to him.

Moreover, defendant consented to Officer L. searching his room, and the officers only asked him a few questions regarding the shotgun once it was found under his bed. It was not until Officer W. received information from his dispatcher that defendant had a felony conviction that he asked questions about the conviction and more about the gun. Thus, the contact started out as a conversation between defendant and the officers regarding the TRO. It only turned into questioning once they received information that

he had a prior felony conviction and knew he had a gun.[2] The record reflects no confrontation or coercion in the officers' contact with defendant.

Considering the totality of the circumstances surrounding the contact between defendant and the officers, we conclude he was not in custody and there was no *Miranda* violation. Therefore, the court properly admitted defendant's statements made to the officers.

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.

[2] In light of our conclusion that defendant was not in custody, there is no need to discuss in any further detail whether he was interrogated, for purposes of *Miranda*.